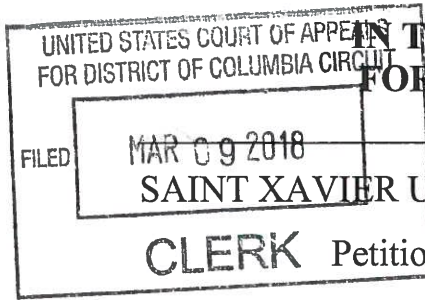


ORIGINAL**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT****UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT****MAR 09 2018****RECEIVED****SAINT XAVIER UNIVERSITY,****CLERK** Petitioner,

v.

**NATIONAL LABOR RELATIONS
BOARD,**

Respondent.

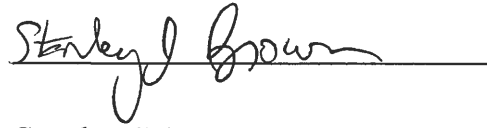
No. 18-1076**RECEIVED
U.S. COURT OF APPEALS
FOR THE D.C. CIRCUIT
2018 MAR -9 PM 5:46
FILING DEPOSITORY****PETITION FOR REVIEW OF A DECISION AND ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

Pursuant to 29 U.S.C. § 160(f) and Rule 15(a) of the Federal Rules of Appellate Procedure, Saint Xavier University (the “University”), a Catholic and Spiritan university, hereby petitions this Court for review of the Decision and Order issued by the National Labor Relations Board (“NLRB”) in the case captioned as Saint Xavier University and Saint Xavier University Adjunct Faculty Organization, IEA-NEA, Case 13-CA-204564 (“Order”), and entered on March 9, 2018. A copy of the public version of this Order is attached as Exhibit A to this petition.

The Order concludes that the NLRB has jurisdiction over the University in a matter involving a unit of faculty employed by the Catholic, Sisters of Mercy University, and that the University committed an unfair labor practice under

Subsections 8(a)(1) and 8(a)(5) of the National Labor Relations Act for refusing to bargain with the union on jurisdictional grounds. 29 U.S.C. § 160(f) grants the University the right to obtain review of the Order “in the United States Court of Appeals for the District of Columbia.” This Court should set aside the Order because the Board lacks jurisdiction under the Supreme Court’s ruling in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), and this Court’s rulings in *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002), and *Carroll College, Inc. v. NLRB*, 555 F.3d 568 (D.C. Cir. 2009). The Order should also be set aside because it violates the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1.

Respectfully submitted,



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Counsel for Saint Xavier University

Dated: 3/9/2018

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

MAR 09 2018

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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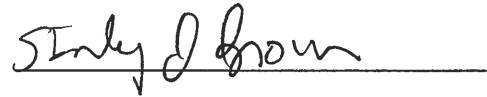
No. 18-1076**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Saint Xavier (the “University”) hereby submits the following Corporate Disclosure Statement.

The University is a nonprofit corporation, incorporated in the state of Illinois, and is exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986, as amended. The University has no parent corporation, and no publicly held corporation owns 10% or more of its stock. Under the University’s Bylaws the Conference *for* Mercy Higher Education, Inc. (CMHE) is the University’s sole corporate member and is vested with certain reserve powers. Such powers include “the responsibility to ensure that the Corporation continues its educational and religious mission and purposes, especially its Catholic-Mercy character, in accord with the University’s Articles

of Incorporation.” The CMHE has the sole power to: amend the University’s Articles of Incorporation; approve certain amendments of the University’s Bylaws; approve changes to the University’s mission statement or philosophy; approve nominees to the University’s Board of Trustees; approve the finalists for the position of University President; sell, lease or dispose of University land and buildings worth over ten million dollars; and merge, consolidate or dissolve the University. The University also may not borrow or refinance a loan for more than ten million dollars, without approval of the CMHE.

Respectfully submitted,



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Counsel for Saint Xavier University

Dated: 3/9/2018

CERTIFICATE OF SERVICE

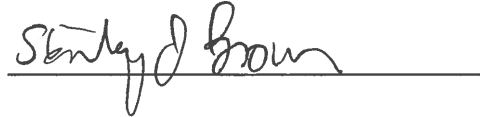
I hereby certify that on this date, true and correct copies of the foregoing
Petition for Review and Corporate Disclosure Statement were sent by Federal
Express, to the following:

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A handwritten signature in black ink, reading "Stanley J. Brown", is written over a horizontal line.

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Dated: 3/9/2018

EXHIBIT A

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Saint Xavier University and Saint Xavier University
Adjunct Faculty Organization, IEA-NEA. Case
13-CA-204564**

March 9, 2018

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE
AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on August 17, 2017, by Saint Xavier University Adjunct Faculty Organization, IEA-NEA (the Union), the General Counsel issued the complaint on August 25, 2017, alleging that Saint Xavier University (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 13-RC-022025. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On September 13, 2017, the General Counsel filed a Motion for Summary Judgment. On September 15, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but it contests the validity of the Union's certification of representative on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the Board lacks the authority to assert jurisdiction over part-time faculty members at its self-identified religious university.¹

¹ Chairman Kaplan and Member Emanuel did not participate in the underlying representation proceeding, and they express no opinion on the merits of the Board's decision in that proceeding or on whether *Pacific Lutheran University*, 361 NLRB 1404 (2014), was correctly decided. Nonetheless, they agree that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a private, nonprofit university offering undergraduate and graduate degrees at its campuses in Chicago and Orland Park, Illinois (the Respondent's facilities).

In conducting its operations during the past calendar year, the Respondent has derived gross revenue from all sources (excluding contributions which are, because of limitations by the grantor, not available for use for operating expenses) in excess of \$1 million of which at least \$50,000 was received directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the mail ballot election held from June 24 to July 12, 2011, the Union was certified on September 30, 2016,² as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All part-time faculty employed by the Employer at its campuses presently located at 3700 West 103rd Street, Chicago, Illinois and 18230 Orland Parkway, Orland Park, Illinois, who teach at least three credit hours per semester.

Excluded: All part-time faculty while teaching coursework in the Pastoral Ministry Institute and members in the School of Nursing, all part-time faculty

proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

² On August 23, 2016, the Board denied in part the Respondent's request for review. 364 NLRB No. 85 (2016).

teaching in the Department of Religious Studies, all music tutors, all student supervisors in the School of Education, independent contractors, confidential employees and managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By emails dated May 22, June 6, June 29, and July 13, 2017, the Union requested that the Respondent meet and bargain with it as the exclusive collective-bargaining representative of the unit employees. Since about July 25, 2017, the Respondent has failed and refused to bargain with the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since July 25, 2017, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Saint Xavier University, Chicago and Orland Park, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Saint Xavier University Adjunct Faculty Organization, IEA-NEA (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All part-time faculty employed by the Employer at its campuses presently located at 3700 West 103rd Street, Chicago, Illinois and 18230 Orland Parkway, Orland Park, Illinois, who teach at least three credit hours per semester.

Excluded: All part-time faculty while teaching coursework in the Pastoral Ministry Institute and members in the School of Nursing, all part-time faculty teaching in the Department of Religious Studies, all music tutors, all student supervisors in the School of Education, independent contractors, confidential employees and managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in Chicago and Orland Park, Illinois, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered,

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

SAINT XAVIER UNIVERSITY

3

defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 25, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 9, 2018

Marvin E. Kaplan, Chairman

Mark Gaston Pearce, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Saint Xavier University Adjunct Faculty Organization, IEA-NEA (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

Included: All part-time faculty employed by us at our campuses presently located at 3700 West 103rd Street, Chicago, Illinois and 18230 Orland Parkway, Orland Park, Illinois, who teach at least three credit hours per semester.

Excluded: All part-time faculty while teaching coursework in the Pastoral Ministry Institute and members in the School of Nursing, all part-time faculty teaching in the Department of Religious Studies, all music tutors, all student supervisors in the School of Education, independent contractors, confidential employees and managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

SAINT XAVIER UNIVERSITY

The Board's decision can be found at <https://www.nlr.gov/case/13-CA-204564> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

